

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.L. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.L.,

Defendant and Appellant.

E047798

(Super.Ct.No. SWJ008787)

OPINION

APPEAL from the Superior Court of Riverside County. Bradley O. Snell,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel,
for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for Minors.

Defendant, L.L. (mother), appeals from jurisdictional and dispositional orders declaring her two boys, E.L. (14 years old) and J.L. (10 years old), to be dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b),¹ and removing the children from her custody and placing them with their father. Mother argues there was insufficient evidence supporting the finding that leaving the boys with her presented a risk of harm to the children. She asserts that the juvenile court should have left the boys in her custody and ordered the less drastic alternative of family maintenance services with strict supervision by the Department of Public Social Services (DPSS).

We conclude there was sufficient evidence to support the jurisdictional and dispositional orders, and affirm the judgment.

1. Factual and Procedural Background

On September 7, 2008, DPSS received a referral. Mother reportedly had run away from father with the boys, was living with various relatives and friends, was bipolar, and was not taking her medication. The referral further stated the boys were not properly supervised and E.L., who was autistic, was physically aggressive with J.L. and mother.

A social worker interviewed mother at her home a week later. Mother said she was living there with father and her boys. The home was clean and there was adequate food in the home. Mother said she had uterine cancer, rheumatoid arthritis, and severe vitamin B deficiency, but denied having any mental health issues. She also denied taking

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

any medication for mental health problems or seeing a therapist. She acknowledged previously being diagnosed as bipolar.

Mother informed the social worker that E.L. was autistic and became aggressive when his medications wore off. E.L. saw a doctor once a month. Mother claimed father was bisexual, had a lover, and either father or his lover wanted to kill her. Because of this, she left father for a couple of months and hid from him with the boys. Upon discovering pornography on father's computer, she feared father might have molested the boys.

The social worker interviewed the boys on September 15. J.L. said he got along well with his parents. E.L. had punched him the previous evening and had previously hit mother as well. Mother could not make him stop. J.L. said father was the only one who could protect him from E.L. E.L. said his parents were getting divorced. They fought all the time and father drank. E.L. acknowledged hitting J.L. and mother. E.L. said he hit J.L. when he was angry because it made him feel better. E.L. hit mother when she annoyed him.

During father's interview on September 15, 2008, father admitted drinking alcohol, but denied it was a problem. Father confirmed E.L. had hit J.L. and mother. Father said mother had mental health problems. Father believed she was in denial about her mental health issues and she believed she did not need any medication. Normally, mother cared for the boys after school while father was at work. The social worker told father that, because of mother's mental problems, he needed to arrange for other

supervision of the boys. Father said he would have the paternal grandmother stay with the boys when he was not home.

On September 16, the social worker spoke to mother's adult son, Riley. Riley said mother had had mental health problems throughout his childhood and was getting worse. He believed mother needed medication but she would not take it. She was delusional and paranoid. He did not believe she would hurt the boys but, when she was having mental problems, she could not focus on the boys, which meant the boys were left on their own and then E.L. would hurt J.L. Mother and father were continually fighting. Father dealt with this by drinking. The boys did not have any structure. As a consequence, E.L. would get physically aggressive with J.L. and mother.

On September 23, 2008, mother informed the social worker father had not come home the previous evening and she had been left alone with the boys. The social worker met with father and he agreed to follow a written safety plan in which he would not leave the boys alone with mother until she received a mental health assessment determining her ability to care for the boys. Father said he would have the paternal grandmother stay with the boys.

On September 25, 2008, father reported that mother was doing better and had begun counseling. On October 3, 2008, father reported that the paternal grandmother was supervising the boys.

DPSS received a letter from mother's psychiatrist, Dr. P.C. Patel, who stated that mother had been his patient since 2004 and that she suffered from bipolar disorder and

“AD/HD, Predominantly inattentive.” Dr. Patel stated he believed mother’s mental illness “should not prohibit her from having custody of her children.”

On October 7, mother’s counselor, G. Anne Cullinane, told the social worker that she had seen mother once and would meet with the other family members and provide a complete assessment.

Father reported on October 17 that the family had attended a counseling session. The counselor recommended weekly sessions for mother and continued family sessions. Father claimed the counselor had said mother was stable enough to be alone with the boys. The social worker told father that mother was not to be left alone with the boys.

The social worker reported that on October 20 she visited the boys’ home. Mother was alone with the boys. She said she believed her diagnosis of bipolar disorder was incorrect and that she suffered from post-traumatic stress disorder (PTSD). During the interview, father arrived home from work. The social worker asked him and mother about their daily schedules. They revealed that mother cared for the boys unsupervised for several hours after the boys got home from school, until father returned home from work. The social worker told the parents this was a violation of the safety plan and they should be following it.

Initially, mother said she believed the case would be closed, but later said she did not want the case closed because she wanted the children checked on once a month in order to make sure they were safe. Mother accused father of child abuse. Father denied this. Mother said the only reason she and father had not separated was because father did not want to pay her any support. The social worker noted that during her 90-minute visit,

her conversation with mother became less coherent and logical. It became more difficult for mother to focus on the issues and she did not seem to understand the consequences of opening a case against her.

When the social worker visited the family on October 21, 2008, mother said she was concerned father had molested the boys and believed this was based on homosexual pornography father kept on his computer. She feared father would take the boys and use them by selling them to other men. She also claimed father was taking E.L.'s medication. Mother had difficulty staying focused and appeared agitated and erratic. Mother said she had been home with E.L. all day and E.L. had missed his psychiatrist appointment and needed medication.

The boys were taken into protective custody that same day because the boys were left with mother without other supervision.

On October 23, DPSS filed a juvenile dependency petition under section 300, subdivision (b). At the detention hearing, the court ordered the boys detained. Supervised visitation was permitted as directed by DPSS. J.L. was placed with a paternal aunt. E.L. was placed in a foster home.

On November 4, the social worker interviewed father. He denied the petition allegations and said that mother would never hurt the boys. He denied that he and mother intentionally violated the safety plan. They thought the two-week plan had concluded. Father denied abusing alcohol or any domestic violence between him and mother. He also denied that he or mother had neglected E.L.'s medication needs.

On November 5, 2008, father informed the social worker that mother had served him with divorce papers.

The social worker interviewed mother on November 10, 2008. She denied having any unresolved mental health problems that placed the boys at risk. She acknowledged having been diagnosed as bipolar, but claimed the diagnosis was wrong and therefore she was not taking medication for her bipolar disorder. She also said she had been diagnosed with attention deficit hyperactivity disorder.

Mother claimed father had been verbally and psychologically abusive to her in the boys' presence. She was concerned father had subjected the boys to homosexual pornography on the computer and believed father was using marijuana. Mother said her marriage to father had deteriorated. As a consequence, she decided to take the boys and leave father. She returned five weeks later because father did not deposit any money in their checking account.

On November 11, the social worker interviewed the paternal grandmother, who stated that she was willing to supervise the boys at father's home as long as mother was not present. The social worker also spoke to mother, who said she had spoken to E.L. the night before and E.L. said he was afraid to talk to her. Mother also tried to talk to J.L. but was unable to speak to him. Mother feared father had taken J.L. from his placement. The social worker confirmed this had not occurred and that J.L. was safe in his placement. J.L. had simply refused to speak to mother.

Mother visited the boys regularly and her visits were appropriate. She was affectionate and loving towards the boys. She also called the boys during the week. The

social worker concluded father had denied mother proper medical care. He told her the treatments were too expensive even though, as a nurse, he should have known she needed specialized care and medication. This undermined mother's ability to properly care for the boys.

The social worker concluded the boys should remain in father's care as long as he had proper, supervised care for them. The social worker further concluded the boys were not safe at home with mother until she received sufficient treatment to help her deal with her mental health issues. It was recommended that father receive family maintenance services and mother be offered family reunification services.

On November 20, the court authorized placement of the boys with father, conditional upon the paternal grandmother residing in the home and assisting in the boys' care. The court authorized mother to visit the boys a minimum of once a week, with the visits to be supervised.

Mother's counselor, Cullinane, submitted a report stating that she would be seeing mother bi-weekly and would stay in close contact with mother daily. Based on Cullinane's examination of mother, Cullinane concluded mother was not a danger to the boys and was capable of providing appropriate care for the boys. Cullinane noted mother had been diagnosed as bipolar, but Cullinane believed mother's diagnosis should be PTSD and mother's anxiety should be treated with medication, along with participating in individual and family counseling.

Cullinane stated in her mental examination report that mother's lack of stability was exacerbated by experiencing marital discord. Cullinane concluded father was

attempting to control mother and was abusing her. Mother had told Cullinane father was denying her and the boys appropriate medical care.

On November 24, Riley told the social worker that based on a recent visit with mother, he believed mother's mental health was slowly getting worse and father had not made an effort to get help for mother. Riley believed father was capable of taking care of the boys and mother was not a threat to them as long as she was with father.

The boys were returned to father on November 27. On December 1, mother informed the social worker that father had obtained a restraining order. She provided DPSS with a copy of the order.

During a scheduled visit between mother and the boys on December 4, the boys refused to get in the social worker's car to go visit mother.

On December 9, 2008, Riverside County Mental Health provided an assessment and care plan for mother, stating she was diagnosed as having PTSD and "[a]djustment D/O w/depressed mood." Therapy was recommended once a week. She was taking medication for her mental health conditions. The report stated mother's judgment and insight was fair and she did not appear to have any delusions or hallucinations. Mother reportedly had multiple involvement with child protective services. In 2002, her children were removed because of her mental instability and inability to provide for the children.

On December 11, E.L. refused to participate in a supervised visit with mother.

On December 12, mother visited the DPSS office, complaining about her cell phone bill. The social worker observed that mother was acting strange. She again appeared at the DPSS office on January 5, 2009. She told the social worker she did not

want anyone saying she was “crazy.” She claimed DPSS had filed a restraining order against her. The social worker told her there was no evidence of that.

At the contested jurisdictional/dispositional hearing on January 14, 2009, father was stricken from the petition. The trial court indicated it had relied heavily on information from mother’s children, who indicated mother’s mental health problems appeared to have gotten worse and the boys were afraid of her. The court found true the petition allegation that mother had unresolved mental issues which placed the boys at risk of suffering from serious physical harm or neglect. The court further ordered the boys removed from mother’s custody and placed with father under a family maintenance plan. Mother was to receive reunification services.

2. Sufficiency of Evidence Supporting Jurisdictional Finding

Mother argues there is insufficient evidence to support the juvenile court’s jurisdictional findings under section 300, subdivision (b). We disagree.

Section 300 authorizes the juvenile court to adjudge a child a dependent child of the court under certain specified circumstances. Subdivision (b) describes one of those circumstances as follows: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance

abuse.” Mother argues there is no evidence linking her mental condition with any risk of future harm or illness to the children. We disagree.

In reviewing the juvenile court’s jurisdictional findings, we apply the substantial evidence standard. (*In re James C.* (2002) 104 Cal.App.4th 470, 482; *In re E.H.* (2003) 108 Cal.App.4th 659, 669.) We consider the record as a whole, resolving all conflicts in favor of upholding the ruling, and determine whether it contains substantial evidence, i.e., evidence that is reasonable, credible, and of solid value to support the court’s findings. (*In re E.H.*, *supra*, at p. 669.) Just one incident and one witness’s testimony can support jurisdiction under section 300. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.)

The primary purpose of dependency proceedings is the protection of the child. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214 (*Jason L.*); §§ 300, subd. (b), 300.2.) Because subdivision (b) provides that “[t]he child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness,” there must be evidence that circumstances existing at the time of the hearing make it likely that the child will suffer some type of serious physical harm or illness in the future. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*); see also *In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) Evidence of past problems may be relevant to current circumstances and thus may be considered. (*In re Michael S.* (1981) 127 Cal.App.3d 348, 358.)

In order to find jurisdiction under subdivision (b) of section 300, there must be evidence showing “(1) neglectful conduct by the parent in one of the specified forms [set out in section 300, subdivision (b)]; (2) causation; and (3) ‘serious physical harm or

illness' to the minor, or a 'substantial risk' of such harm or illness.” (*Rocco M.*, *supra*, 1 Cal.App.4th at p. 820; see also *In re David M.* (2005) 134 Cal.App.4th 822, 829.) DPSS has the burden of proving an identified, specific hazard in the child’s environment which has resulted in concrete serious physical harm to the child, or which poses a substantial risk of such harm. (*Rocco M.*, *supra*, at p. 824.)

Citing *In re Matthew S.* (1996) 41 Cal.App.4th 1311 (*Matthew S.*) and *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067 (*Kimberly R.*), mother argues there was insufficient evidence to support the petition allegation that mother “has unresolved mental health issues [and] such conditions place the children at risk of suffering from serious physical harm or neglect.” *Matthew S.* and *Kimberly R.* are factually distinguishable.

In *Matthew S.*, the mother believed someone had mutilated her 13-year-old son’s penis. She took him to a urologist for an examination. The urologist found there was no evidence of such an injury. The son, Matthew, also denied that he had suffered such an injury. (*Matthew S.*, *supra*, 41 Cal.App.4th at p. 1314.) The urologist did not believe Matthew was in danger of mistreatment but was concerned about the effect the mother’s delusions might have on Matthew and mother’s 16-year-old daughter. (*Ibid.*) The matter was referred to DPSS and a petition was filed under section 300, subdivisions (b) and (c). The petition alleged Matthew was suffering or at risk of suffering serious physical and emotional damage due to the mother’s emotional problems. (*Id.* at p. 1315.) The juvenile court found true the subdivisions (b) and (c) allegations. (*Id.* at p. 1318.)

On appeal, the *Matthew S.* court concluded there was insufficient evidence to support the subdivision (b) allegation that Matthew would suffer serious physical harm or illness as a result of the mother's supervision and protection of him. (*Matthew S.*, *supra*, 41 Cal.App.4th at p. 1319.) The mother had a history of receiving treatment and taking medication for her mental health problems, provided a well-kept home and meals for the children, obtained necessary medical treatment for the children, and had a close, loving relationship with her children. The children also were not afraid of her. They recognized mother's delusional statements for what they were and wanted to remain with her in their home. (*Id.* at p. 1316.)

Although the *Matthew S.* court held there was insufficient evidence supporting the subdivision (b) allegation, the court affirmed the jurisdictional finding under subdivision (c), concluding there was substantial evidence Matthew was at risk of suffering serious emotional damage as a result of his mother's delusions about his health. (*Matthew S.*, *supra*, 41 Cal.App.4th at p. 1321.)

Unlike in *Matthew S.*, in the instant case, the boys, who were several years younger than the children in *Matthew S.*, feared mother. There was evidence that on one occasion, J.L. did not want to speak to mother. Also, in December 2008, the children refused to get out of the social worker's car and visit mother. There was also evidence that, prior to the instant juvenile dependency proceedings, mother denied she had mental health problems and refused any medication. Father reported in September 2008 that mother was not receiving any treatment or taking any mental health medication because she was in denial regarding her mental health problems.

In addition, mother's adult son, Riley, stated during an interview in September 2008, that mother's mental health was deteriorating and she was mentally unstable. She was agitated, "rapidly cycling," delusional, paranoid, and had refused to take medication for her mental health problems. Riley said he was concerned about E.L. and J.L. He believed they were not adequately cared for. They had no structure and when E.L. did not have structure, he got physically aggressive with J.L. and mother, particularly when E.L.'s medication for autism wore off. Riley stated he did not believe mother would hurt E.L. and J.L. but, when she was having mental health problems, she was unable to focus on the boys. They then were left to fend for themselves and E.L. would hurt J.L. Father, J.L., and mother reported that E.L. had hit J.L. and father was the only person who could protect J.L. from E.L.

Mother argues there is insufficient evidence linking her mental health problems with allegations the boys would be at risk of harm if left in her sole custody. She notes that evaluations by her psychotherapist, her family counselor, and the county mental health department all state she is capable of caring for her children. But there is also evidence that, if left alone with the boys, there is a risk they will suffer harm, particularly J.L.

Kimberly R., *supra*, 96 Cal.App.4th 1067 is also distinguishable. In that case, the mother suffered from mental illness but managed it with medication and psychiatric and psychological supervision. Her three-year-old son was removed from her care based on a single instance in which the mother arrived 20 minutes late to pick up her son at day care. There was evidence that this was because she was overmedicated. The *Kimberly R.* court

concluded this single instance of picking up her child late was not an uncommon occurrence among parents and did not pose a substantial risk of harm to the child. (*Id.* at p. 1079.) The *Kimberly R.* court noted that “[h]arm to a child cannot be presumed from the mere fact the parent has a mental illness.” (*Ibid.*) The court thus concluded there was insufficient evidence to support the order removing the child from the mother’s custody. (*Ibid.*)

Here, there was more than mere evidence of a single, relatively common incident supporting the trial court’s findings. Even though mother’s doctor, therapist, and the county mental health department concluded mother was capable of caring for her children, there was evidence that mother had a history of refusing to take her medication and had been in denial regarding her mental problems. Also, the boys, particularly J.L., were not adequately supervised and protected when she was experiencing mental health problems. Since mother had separated from father, leaving the boys in mother’s sole custody posed a serious risk of harm to the boys, particularly as to J.L.

It is important to recognize in this context that dependency jurisdiction is taken over the child—not the parent—when the child needs to be protected. (§ 300; see *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) A petition to declare a child a dependent of the juvenile court is not a charge against the parents; rather, the petition describes the basis for acquiring jurisdiction over the child. This is in keeping with the purpose of juvenile dependency law, “which is to protect the child, rather than prosecute the parent.” (*In re Alysha S.*, *supra*, at p. 397.) In this case, viewed in the light most favorable to the judgment (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899), we find substantial evidence to

support the juvenile court's jurisdictional finding pursuant to subdivision (b) of section 300.

3. Sufficiency of Evidence Supporting Dispositional Order

Mother challenges the juvenile court's dispositional order removing the boys from her custody under section 361, subdivision (c)(1). Mother argues there was insufficient evidence that leaving the boys with her presented a risk of harm to the boys and, therefore, the juvenile court should have left them in her custody. Alternatively, the court should have ordered the less drastic alternative of family maintenance services with strict supervision by DPSS.

We disagree for the same reasons stated above as to the jurisdictional order. Because the evidence warranted a finding there was substantial risk the boys might suffer serious physical harm if left in mother's sole care, we also conclude there was sufficient evidence to support the juvenile court's finding under section 361, subdivision (c)(1), that placing the boys in mother's sole custody would result in a substantial danger to the boys' physical health, safety, protection, and physical or emotional well-being. (*Rocco M., supra*, 1 Cal.App.4th at p. 826.)

Even though mother's mental condition alone was not a sufficient reason for removing the boys from her custody, there was evidence of other factors supporting the court's dispositional order. During the dependency proceedings, mother and father separated. This meant that if the boys were placed with mother, there would be no one to supervise and protect them when mother was having mental health problems. There also would be no one to protect J.L. from E.L. when he became excessively aggressive.

There would also be no one to ensure that mother took her medication. There was evidence that, prior to initiation of the instant juvenile dependency proceedings, mother had refused to take medication for her mental health condition and claimed she did not need any medication. While mother had begun taking medication and receiving treatment during the dependency proceedings, this was for only a relatively short period of time (four months).

We conclude that under such circumstances, there was sufficient evidence supporting the juvenile court's dispositional order removing the boys from mother's custody and placing them with father, whom they had previously been living with prior to mother and father's separation. This was the most reasonable option. The boys were able to continue living with father and also see their mother during supervised visits.

Citing section 361, subdivision (d), mother complains that the trial court erred by failing to state the facts on which its decision to remove the boys was based. We find any such error harmless. (*Jason L.*, *supra*, 222 Cal.App.3d at p. 1218.) As we stated above, substantial evidence supports the trial court's finding of a substantial risk of serious harm pursuant to section 300, subdivision (b).

Moreover, although the court did not state in detail the facts on which its decision to remove the boys was based, the court's reasons are sufficiently clear. During the jurisdictional hearing immediately before the dispositional hearing, the court stated that, although there was evidence mother was not totally out of touch with reality, there was also evidence contained in the DPSS report showing that mother had "some very clear behavioral problems that the Court feels are unresolved mental issues."

The court further stated that, more importantly, “mother’s own children who have lived with this mother and know this mother and have specifically stated that they’ve seen her mental issues for eight years and in their opinion think that the mother is getting worse. [¶] It’s got to the point where she is becoming irrational. They are fearful of being with her. She makes allegations about abuse of these children at the hand of the father. Yet, the boys are totally denying that.” The court thus found jurisdiction under section 300, subdivision (b), finding that there was a substantial risk that the boys would suffer serious physical harm as a result of mother’s failure or inability to adequately supervise and protect the boys, particularly J.L.

Immediately following the court’s jurisdictional ruling, the court further briefly stated during the dispositional hearing that it made findings pursuant to section 361, subdivision (c)(1). While the court did not state in detail its reasons for ordering the boys placed with father, as opposed to mother, the court’s reasons are apparent from the record and any deficiency under section 361, subdivision (d) constitutes harmless error.

At the time the petition was filed, the boys were living with both mother and father. It was reasonable to place the boys with father not only due to mother’s mental health problems, but also because there was evidence mother had difficulty protecting J.L. from E.L. and mother had a history of not taking her medication, during which her mental health deteriorated and the boys were left without structure or adequate supervision. There was also evidence that there were times when the boys feared mother.

Based on such evidence, it is not reasonably probable the court would have found in favor of mother’s continued parental custody. (*Jason L.*, *supra*, 222 Cal.App.3d at p.

1218.) Even if the lower court had complied with former section 361, subdivision (c), it would still have made the same findings and dispositional order removing the boys from her custody and placing them with father.

4. Disposition

The jurisdictional and dispositional orders entered on January 14, 2009, are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Gaut
J.

We concur:

s/Richli
Acting P. J.

s/Miller
J.